EXHIBIT 5
DATE 1/27/11
HB 222

January 27, 2011

REASONS MLTA OPPOSES HOUSE BILL 222 WITHHOLDING LEGISLATION

Summary:

During the 2005 and 2007 Legislative Sessions the Montana Land Title Association was a leader in opposing bills by the Montana Department of Revenue (DOR) to enact a "non-resident withholding tax." At this time we understand the DOR is making the enactment of the withholding tax their number one priority. If adopted their idea would likely enact a 2.5% withholding tax on most closings involving non-residents with the stated purpose of making sure non-resident sellers pay capital gains taxes associated with the sale of their property. Title insurers would be asked to collect the withholding tax which they would remit it to the DOR.

<u>The MLTA opposes withholding legislation sought by the Montana Department of Revenue for these key reasons</u>:

1. MLTA supported the successful passage of SB 181 in the 2009 session to reinstate the filing of IRS 1099 forms with the DOR instead of establishing a new withholding tax. We believe the DOR can more efficiently use information from 1099s to cross-check for tax compliance. After all, the IRS has efficiently used this process for years.

2. Even though the tax will only be on non-residents, the law would require closing agents to verify who is and who is not a resident at all closings which will increase the time and expense of all closing which in turn will increase closing costs and fees to Montana residents. We disagree with the DOR that the determination of non-residency will be a "self-executing" form done by the customer. Just like the Realty Transfer Certificate, we know most people will not fill out the form without help or will not fill it out unless we provide and make sure it is done. Again this will take additional time, effort and money because EVERYONE will need to fill out an additional form which we as closing agents will also have to store and maintain for a certain period of time.

MLTA does not support the Real Estate Industry being the only private industry faced with daily enforcement of tax laws. The MLTA believes the enforcement of tax laws is the responsibility of the Internal Revenue Service and the Montana Department of Revenue. Placing this burden on squarely on the shoulders of MLTA Members is unfair and will significantly decrease the efficient processing of real estate transactions.

3. Section 5 requires the form and copy of payment to be attached to the Realty Transfer Certificate before the Clerk and Recorder may accept the document for recording. This creates of host of issues that have a great potential to slow down the process and put the Clerk and Reorder in a position to verify the appropriate tax documents are attached before accepting a deed. This creates an additional burden on the Clerks office that they must review and approve income tax document.

4. MLTA continues to support, develop and circulate educational materials for our members to use during closings to remind individuals about their tax obligations.

5. MLTA opposes and questions the integrity of the DOR's "RTC Review Program" conducted during 2008 in which they collected questionable information to justify their support for a withholding tax. FYI, the DOR spent over $750,000 in taxpayer money to conduct the RTC Review Program. Unfortunately the DOR's RTC Program does not accurately account for non-taxable transactions and assumes all RTCs represent a taxable transaction.

MLTA has conducted their own "non-resident tax compliance reviews" recently and found the data we collected from actual closing demonstrates that the potential non-resident transactions to be less than 3% of the total real estate closings. And, out of that 3% not every out of state resident who sells MT property will have a gain or is required to file a MT tax return. The DOR data ignores all types of transactions which are non-taxable.

Using the DOR's out of state non-compliance figures, the DOR says approximately 30% of "non-residents" do not pay the required tax. MLTA's data indicates only 5% of transactions COULD have a "out of state resident" and out of that possibility only 2 out of every 100 transactions may have been a non-compliant out of state seller.

So for a very small number of transactions all Montanans will need to pay higher fees and costs and take more time at closings.

6. MLTA does not support a withholding tax that will take money out of the economy and place funds in a government run escrow account.

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Supporting data
Oppose HB 222

Sales analysis by First American Title Company of Montana, Inc.. Data reflects real estate closes conducted by First American in 2009 and 2010 representing 21 Montana Counties.

Preliminary results by Ted Lovec, Owner of American Title and Escrow with operations in 8 Montana Counties including Yellowstone County are consistent with below figures.

First American Sales:

2009 – 2011 Sales	9,360
Sales with 1099 issued:	3,907
Sales with 1099 with Out of state address:	1209
Of 1209 sales, 1099's that have proceeds greater than $250K	237

237 represents 2.5% of all sales.

237 "Potential taxable sales" further reduced by:
- no gain on property
- Sellers that will file a MT tax return and pay their fair share.

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